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20. Appeal and Error (§ 843 (3)*)—Unnecessary Questions or Questions Not Proper to Decide.—Where a cause must be remanded for a new trial for other reasons, it is improper to consider the trial court's denial of motion to set aside verdict as contrary to evidence, since evidence may be different upon new trial.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 586.]

Error to Corporation Court of Staunton.

Bill of complaint by Armistead Rust and others against Herbert Taylor, in his own right and as executor of the estate of Frederick G. Rust, deceased, and Virgil Reid, praying an issue devisavit vel non to determine the validity of an alleged will. Verdict of jury, and decree based thereon for defendants and in favor of the will, and complainants bring error. Verdict set aside, decree reversed, and cause remanded.

E. E. Garrett, of Leesburg, *Fitzhugh Elder*, of Staunton, and *M. J. Fulton*, of Richmond, for plaintiffs in error.

Timberlake & Nelson, *Chas. Curry*, and *Jos. A. Glasgow*, all of Staunton, for defendants in error.

HILLIARD *v.* UNION TRUST CO. OF NEW JERSEY et al.

Nov. 14, 1918.

[97 S. E. 335.]

1. Appeal and Error (§§ 181, 499 (1)*)—Reservation of Grounds of Review—Objection Not Raised Below.—Objections not raised in the lower court, or, if made in fact, not properly presented in the record, will not be considered in the appellate court; a rule not obtaining where the questions are jurisdictional.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 547, 548.]

2. Appeal and Error (§ 1008 (2)*)—Review—Judgment of Trial Court.—Where jury was waived and all questions of law and fact submitted to the court, the evidence and not the facts being certified, the rule of decision in the appellate court is to give the judgment of the trial court the same effect as the verdict of a jury.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 577, 578.]

3. Appeal and Error (§ 1011 (1)*)—Review—Finding on Conflicting Evidence.—The finding of the trial court on conflicting evidence as to a question of fact will not be disturbed on writ of error.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 577, 578.]

4. Attachment (§ 200*)—Sale—Gross Inadequacy of Price—Evidence.—Testimony of a witness, at a subsequent time when conditions had changed, that he would give \$10,000 for an interest in at-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

tached lands sold for \$7,000, was insufficient to show that the property was sold for a grossly inadequate price.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 740.]

5. Attachment (§ 200*)—Sale—Confirmation—Estoppel to Object.—Defendant, whose attached property was sold under judicial order having procured a modification of the terms of sale, which was complied with by the purchaser in good faith, was estopped from objecting to confirmation of the sale.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 283, 288; 8 Va.-W. Va. Enc. Dig. 727.]

6. Principal and Agent (§ 51*)—Power of Attorney—Construction.—Instrument given by mother to son held a power of attorney constituting the son her attorney in fact to represent her in litigation, and not investing him with her interest in proceeds of sale of certain land.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 297.]

Error to Circuit Court, Rockingham County.

Action by the Union Trust Company of New Jersey and others against Ann P. Hilliard and William C. T. Hilliard. To review certain orders for the sale of her property, Ann P. Hilliard brings error. Orders affirmed, and cause remanded for further proceedings.

D. O. Deckert, of Harrisonburg, and *J. M. Perry*, of Staunton, for plaintiff in error.

Chas. A. Hammer, of Harrisonburg, and *Thomas W. Shelton*, of Norfolk, for defendants in error.

CONRAD *v.* CONRAD'S EX'R et al.

Nov. 14, 1918.

[97 S. E. 336.]

1. Courts (§ 89*)—Precedents—Construction of Wills.—Since similar or identical words in different wills require different constructions, according to context and the peculiar circumstances of each case, precedents are to be relied upon with caution and furnish little aid.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 723.]

2. Wills (§ 439*)—Construction—Testator's Intention.—The testator's intention, when ascertained, must be given effect in construing a will, unless it violates some rule of law, or is contrary to public policy.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 780.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.